

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

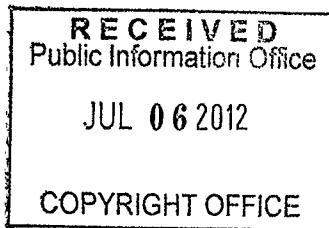
In the Matter of

**DETERMINATION OF RATES AND TERMS
FOR PREEXISTING SUBSCRIPTION AND
SATELLITE DIGITAL AUDIO RADIO
SERVICES**

Docket No. 2011-1
CRB PSS/Satellite II

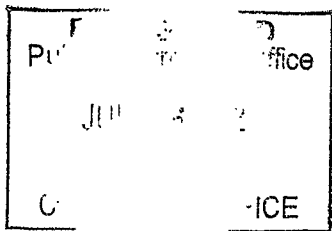
**WRITTEN REBUTTAL STATEMENT OF
SIRIUS XM RADIO INC.**

VOLUME 1 of 3



Introductory Materials

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July 6, 2012

Counsel for Sirius XM Radio Inc.

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Introductory Memorandum to
Written Rebuttal Statement
of Sirius XM Radio

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INTRODUCTORY MEMORANDUM TO THE
WRITTEN REBUTTAL STATEMENT OF
SIRIUS XM RADIO INC.

Sirius XM Radio Inc. ("Sirius XM" or "the Company") hereby submits its written rebuttal statement, pursuant to 37 C.F.R. § 351.11 and the Revised Scheduling Order entered by the Judges on April 25, 2012.

INTRODUCTORY STATEMENT

SoundExchange has proposed a percentage-of-revenue rate beginning at 12% of Sirius XM's gross revenues, a 50% increase above the rate currently in place, with further increases in each year such that, by 2017, Sirius XM would be paying 20% of its gross revenue – or fully two and half times the culminating 8% rate for the current year set by the Copyright Royalty Judges in *Satellite I*. Were this dramatic increase in rates not overreaching enough, SoundExchange has also proposed sweeping changes in the definition of gross revenues that by themselves would increase Sirius XM's royalty payments by more than 30%. This side-door attempt at a rate increase would, moreover, entitle the record industry to a share of Sirius XM revenues that bear no relationship whatsoever to the sound recording performance rights at issue in this proceeding, and would further SoundExchange's avowed mission to abort Sirius XM's ongoing direct licensing initiative. As Sirius XM's rebuttal, building upon the evidentiary record from the

direct case, will demonstrate, there is no sound justification – economic or otherwise – for SoundExchange’s proposal.

As if the audio entertainment marketplace and the record industry’s licensing activities into that marketplace have remained frozen over the past five years, SoundExchange expert Janusz Ordoover defends the reasonableness of the record industry’s rate proposal by resort to the identical benchmark, among those he espoused in the *Satellite I* proceeding, that the Judges there found, albeit with adjustments of their own, to be probative of the upper end of the zone of reasonable SDARS rates for the 2007-2012 license term. These are the rates that have been negotiated between interactive music services and major record labels. In undertaking his analysis here, Professor Ordoover did not consider any other potential benchmarks – beyond observing that resort to transactions between individual major record companies and *different* buyers than Sirius XM was necessitated insofar as, to his November 2011 knowledge, there did not exist direct license arrangements between Sirius XM and individual record labels.

Professor Ordoover took no account of what he has acknowledged are: the dramatically altered audio entertainment landscape from 2007 to the present; the fact that Sirius XM competes in an “intense” and “very dynamic” marketplace for delivery of music and non-music programming into its dominant market: vehicles; the fact that this competition embraces terrestrial radio as well as both interactive and a new generation of non-interactive audio services; or the existence of license agreements between the major labels and such non-interactive services – including involving licensees constituting the *very same entities* from whom, as part of the *very same license agreements* from which, he drew his interactive service benchmarking data. When these blatantly omitted data and circumstances, coupled with data from the numerous direct licenses between Sirius XM and 85 independent record labels that,

contrary to Professor Ordoover's supposition, do exist, are examined for their fee implications here, it becomes apparent that Professor Ordoover's myopic reliance on the interactive benchmark is both dated and unreliable.

Sirius XM's rebuttal case demonstrates that reliance on Professor Ordoover's sole proposed benchmark is inappropriate. There is no need to engage in complex extrapolations to account for the fundamentally different nature of license agreements between record labels and interactive services such as Rhapsody and Napster, on the one hand, and Sirius XM, on the other. The interactive licenses on which Professor Ordoover relies convey different and more valuable copyright rights (permitting interactivity and on-demand access to sound recordings) to services affording subscribers what is otherwise a far more limited – content-only – product. These offerings are of no value whatsoever unless a subscriber supplies his or her own smart-phone type receiver, as well as subscribes to a broadband network capable of delivering the service. In contrast, Sirius XM provides a one-way broadcast that affords no interactivity; is subject to the restrictions of Section 114(d) of the Copyright Act in its selection and broadcasts of sound recordings; and has built, at enormous expense, and provides its subscribers with a complete delivery platform to moving vehicles – via a unique satellite and terrestrial repeater system and in-vehicle receivers.

Stunningly, Professor Ordoover ignores these basic differences in purporting to adjust his interactive service benchmark to fit the fundamentally different Sirius XM service offering. His primary model proposes but a single adjustment to the percentage-of-revenue rate "cluster" he derives from these on-demand services, to account solely for the fact that Sirius XM, in contrast to those services, offers significant non-music programming. The rebuttal testimony of Professors Roger Noll and Michael Salinger dissects Professor Ordoover's methodology and

exposes its many crippling flaws, beginning with its fundamental premise – that all varieties of music services will pay a constant percentage of their revenue for performance rights in a competitive marketplace. This basic economic misconception – which is dispelled by a review of the very agreements that were provided to (though generally not reviewed by) Professor Ordovery – is compounded by Professor Ordovery's failure to account for the significantly different costs incurred by Sirius XM in building and delivering its service to subscribers.

Professor Noll's rebuttal testimony further demonstrates that, if one makes the appropriate adjustments to correct for Professor Ordovery's methodological errors, the resulting rates fall within the range of rates proposed by Sirius XM – whether derived from direct license experience or from the non-interactive service benchmark.

Sirius XM's rebuttal case also responds to SoundExchange's attack on the probative value of its direct licenses, and provides the Judges with certain data they requested. Messrs. Frear and Gertz and Professor Noll describe the current state of the direct license efforts, now encompassing 85 agreements with labels representing seven of Sirius XM's twenty most-frequently-played record companies (seven of sixteen excluding the majors) and whose catalogs reflect the overall quality and variety of Sirius XM's performances of sound recordings. These licenses were obtained in the face of coordinated industry interference designed to discourage record labels from signing licenses which may serve as benchmarks in this proceeding.

Sirius XM's rebuttal case further responds to SoundExchange's effort to defend its rate proposal through the testimony of Professors J. Gregory Sidak and Thomas Lys, the combined force of which is to suggest that the Judges need not worry about drastically increasing rates because Sirius XM now, after 20 years of losses, has finally turned the financial corner and can afford to pay the rates proposed by SoundExchange – indeed, any rate up to nearly 58% of its

revenues. For his part, Professor Sidak, relentless in his multi-year, multi-client campaign to brand Sirius XM as a monopolist that can raise prices at its whim, simply ignores the rejection of his very same advocacy by both the Department of Justice and the Federal Communications Commission, as well as the clear evidence of the dynamic and rapidly evolving technological and competitive landscape in which Sirius XM competes, as acknowledged by every other expert witness opining on the subject in this proceeding (including Professor Ordovery). Professor Lys, in turn, offers purely speculative projections of Sirius XM's likely financial future, predicated on numerous erroneous assumptions and faulty analyses, of the very type that have proven wide of the mark in the past. Mr. Frear of Sirius XM, together with experts Professors Stowell, Noll, and Salinger, address the various flaws in the financial portrayals so presented, the undergirding conceptions of "disruption," as well as other misconceptions held by SoundExchange's experts of the proper application of the statutory 801(b)(1) factors to the fee setting process here.

Sirius XM respectfully submits that the direct and rebuttal cases it presents together warrant the setting of SDARS rates for the 2013-2017 license term at between 5 and 7 percent of Gross Revenue, as that term is presently defined in 37 C.F.R. § 382.11.

SUMMARY OF TESTIMONY

In support of the foregoing, Sirius XM's rebuttal witnesses will testify as follows:

David J. Frear

David J. Frear is Executive Vice President and Chief Financial Officer of Sirius XM, and also testified in the direct phase of this proceeding. Mr. Frear's rebuttal testimony responds to SoundExchange's challenges to the use of Sirius XM's direct licenses as an appropriate benchmark. Specifically, Mr. Frear addresses the representativeness of the 85 direct licenses executed to date, and provides the Judges with "top 20" and other data concerning the use of

sound recordings from directly-licensed catalogs to date (viewed both inclusively and exclusively of the majors, who have refrained from any meaningful discussion of direct licenses).

Mr. Frear's testimony also describes how SoundExchange's proposed revisions to the regulatory definition of "Gross Revenues" would in and of themselves generate a more than 30% fee increase to the record industry. He explains how these proposed changes would, among other unwarranted effects, (i) undermine Sirius XM's direct license initiative by requiring double-payment for performances of directly licensed works, and (ii) create royalty obligations associated with revenues in numerous categories having nothing to do with the statutory license.

Mr. Frear's testimony also explains that Sirius XM's experiences in implementing a Music Royalty Fee in 2009 and price increase in January 2012 do not, as SoundExchange's witnesses opined in the direct phase, illustrate an unfettered ability to pass along increased royalty rates to subscribers. Mr. Frear's testimony in addition addresses various other contentions of SoundExchange's witnesses, including testimony from Professor Lys that Sirius XM is recession-proof and from Mr. Sidak that the Company is immune from the forces of competition over the forthcoming rate period. Mr. Frear explains that Professors Lys and Sidak wholly ignore Sirius XM's 20-year history of enormous capital investments and cumulative losses and the rapidly changing pressures and risks facing the Company. Against this backdrop, Mr. Frear's testimony describes how Sirius XM's royalty obligations have grown disproportionately compared to other expenses, all of which the Company has been successful in reducing over time.

Ronald H. Gertz

Ronald H. Gertz, Chairman of Music Reports, Inc. ("MRI"), also testified in the direct phase of this proceeding. He offers rebuttal testimony to respond to SoundExchange's challenges to the representativeness of Sirius XM's direct licenses, as well as to the Judges' specific questions relating to the number of top labels with which Sirius XM has entered into such licenses. As Mr. Gertz explains, Sirius XM has executed 23 new direct licenses since the time its written direct statement was filed in this proceeding, to reach a total of 85 licenses. The catalogs represented by the direct licensors include a broad array of significant artists and genres regularly programmed into Sirius XM's music and comedy channels. Mr. Gertz responds to the SoundExchange suggestion that there is an informational imbalance between Sirius XM and the independent labels by attesting to the facts that many such labels are highly sophisticated and professional, and have engaged in vigorous negotiation over the terms of these direct licenses.

Mr. Gertz testifies that based on an analysis of Sirius XM plays from April 2012, MRI has determined that Sirius XM has entered into direct licenses with seven of the top 20 independent labels played on Sirius XM. Overall, as Mr. Gertz attests, Sirius XM's direct licenses accounted for approximately 5.8% of total spins on the Company's satellite service in April 2012. This percentage grows to 19% if one excludes plays of the major labels. Mr. Gertz's testimony further places these data in the context of ongoing efforts by elements of the record industry, including SoundExchange, to dissuade record labels from entering into direct licenses – and even to renege on those already signed.

Roger G. Noll

Dr. Roger G. Noll, Emeritus Professor of Economics at Stanford University, presented Sirius XM's approach to rate-making during the direct phase of this proceeding. His rebuttal

testimony responds to the direct testimony of Professors Ordoover and Sidak. Professor Noll explains that Professor Ordoover's benchmark analysis is flawed because his use of negotiated rates between record companies and interactive mobile Internet music services fails to take into account that these services differ from Sirius XM in several commercially significant ways that affect negotiated rates. As a result, additional complex adjustments must be made to the interactive services benchmarks to produce appropriate royalty rates. Professor Noll's testimony explains that Professor Ordoover's methodology in reaching his conclusions hinged on assumptions that are refuted by marketplace evidence, including that royalty rates that emerge in competitive markets would be the same for all form of music services delivering all manner of music rights to consumers; that there is no need to account for differences in the rights granted to interactive services on the one hand and Sirius XM on the other; and that there is no need to account for the costs incurred in building and deploying the Sirius XM distribution network. Professor Noll demonstrates that if one were to correct for Professor Ordoover's fundamental errors, the resulting rates would be in line with those proposed by Sirius XM.

Professor Noll's testimony further explains that Professor Ordoover's assertion that any benchmark other than the interactive services benchmark is inappropriate because the rates included therein are affected by the "regulatory overhang" is deeply misplaced. Professor Noll compares the virtues of using as benchmarks one or both of the direct licenses entered into by Sirius XM with 85 licensors and the major labels' licenses with non-interactive services that are far more akin to Sirius XM in the rights conveyed, and value proposition offered to consumers, than the interactive services. He responds to the attacks made on the probative value of the direct licenses and demonstrates that those licenses meet the criteria for establishing reasonable rates here.

Professor Noll's testimony also explains the reasons for his disagreement with Professor Ordoover's conclusion that the Section 801(b) factors are automatically satisfied by a rate reached in a competitive market. Finally, Professor Noll's testimony discusses some of the many flaws that underlie Professor Sidak's conclusion that Sirius XM has monopoly power.

Michael A. Salinger

Dr. Michael A. Salinger, Jacqueline C. and Arthur S. Bahr Professor in Management and Professor of Economics at the Boston University School of Management and senior academic advisor to Charles River Associates, presents testimony responding to the direct testimony of Professors Ordoover and Sidak. First, Professor Salinger opines that the assumption underlying Professor Ordoover's estimates of a reasonable royalty rate – that contracts that would emerge in a competitive unregulated market for sound recording performance rights for satellite radio would entail the same percentage of revenue observed in the market for the rights for interactive internet music services – is fundamentally flawed as a matter of sound economics. Professor Salinger's testimony explains that this assumption ignores the substantial portion of the Sirius XM subscription price that represents payment for the distribution system, as well as the likelihood that rights owners would charge a premium for interactive services compared with non-interactive services. Further, Professor Salinger explains how Professor Ordoover's treatment of Sirius XM's sunk costs (*i.e.*, by relegating them to consideration only under the fourth statutory criterion for disruption) does not make economic sense. As Professor Salinger testifies, as a matter of sound economics, these sunk costs must be considered under the second and third statutory criteria, which require that royalty rates leave a substantial portion of the monthly subscription fee to cover the costs invested in distribution assets (one of Sirius XM's primary contributions to the provision of the satellite radio service).

Professor Salinger also rebuts Professor Sidak's conclusion that, because his estimate for Sirius XM's Tobin's q value (a measure of profitability) is substantially above 1, Sirius XM has monopoly power. As Professor Salinger's testimony explains, a Tobin's q value exceeding 1 does not, in itself, require a finding of monopoly power. Rather, Professor Salinger testifies that as Tobin's q can exceed 1 for firms in a competitive industry. Thus, even were Professor Sidak's estimates of Tobin's q accurate – which, as Professor Salinger explains, they are not – these estimates do not prove that Sirius XM has monopoly power. Finally, Professor Salinger rebuts Professor Sidak's opinion that such monopoly power also is proved by Sirius XM's recent price increase.

David P. Stowell

David P. Stowell, professor of finance at Northwestern University's Kellogg School of Management, also testified in the direct phase of this proceeding. He presents rebuttal testimony responding to the direct testimony of SoundExchange's expert witnesses Lys and Sidak. Professor Stowell explains that Professor Lys has failed to actually examine the risk that Sirius XM's business will be disrupted at some point in the coming five years. He explains that in place of an actual analysis, Professor Lys has simply adopted one forecast put forward by Morgan Stanley – an entity that has a poor track record of forecasting Sirius XM's long term future financial performance. As Professor Stowell explains, a complete analysis of the risk of disruption must account for multiple forecasts, including those that account for the possibility of another financial crisis. He also explains certain of the fundamental flaws in Professor Sidak's analysis of Sirius XM's competitive position, predicated as they are on discredited notions of Sirius XM's asserted imperviousness to competition, ignoring as they do the dramatic ongoing changes occurring in the marketplace in which Sirius XM operates. Professor Stowell also

explains why Professor Sidak's definition of disruption – a complete and immediate shut down of the Company – is so extreme that it is meaningless.

July 2, 2012

Respectfully submitted,

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Index of Witness Testimony

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INDEX OF WRITTEN REBUTTAL TESTIMONY

Witness	Title
David J. Frear	Executive Vice President and Chief Financial Officer, Sirius XM Radio Inc.
Ronald H. Gertz	Chairman, Music Reports, Inc.
Roger G. Noll	Professor of Economics <i>Emeritus</i> , Stanford University
Michael A. Salinger	Jacqueline C. and Arthur S. Bahr Professor in Management and Professor of Economics, Boston University School of Management; Senior Academic Adviser, Charles River Associates
David P. Stowell	Professor of Finance, Kellogg School of Management

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INDEX OF SIRIUS XM REBUTTAL EXHIBITS

Exhibit No.	Sponsoring Witness	Description
SXM Reb. Ex. 001	David J. Frear	11/24/08 Letter agreement between SoundExchange and Sirius XM re reports of use submitted by Sirius XM for its SDARS, webcasting and CABSAT services
SXM Reb. Ex. 002	David J. Frear	6/22/12 Letter from SoundExchange to Sirius XM re Reports of Use Submitted by Sirius XM
SXM Reb. Ex. 003	David J. Frear	6/6/12 Verizon Wireless press release: Verizon Joins With Leading Global Auto Companies To Establish 4G Venture Forum For Connected Cars
SXM Reb. Ex. 004	David J. Frear	6/1/12 Verizon Wireless press release: Verizon to Acquire Hughes Telematics, Inc.
SXM Reb. Ex. 005	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Average Joe's Entertainment
SXM Reb. Ex. 006	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Century Media Records
SXM Reb. Ex. 007	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Chapter Music
SXM Reb. Ex. 008	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Dangerbird Records LLC
SXM Reb. Ex. 009	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Entertainment One U.S. LP

Exhibit No.	Sponsoring Witness	Description
SXM Reb. Ex. 010	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Fair Trade Services
SXM Reb. Ex. 011	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Hippos In Tanks
SXM Reb. Ex. 012	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and HLC Properties Ltd.
SXM Reb. Ex. 013	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Hybrid Recordings
SXM Reb. Ex. 014	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and It's Time Child Records
SXM Dir. Ex. 015	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Kitchenware Records Ltd.
SXM Reb. Ex. 016	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Latinum Records
SXM Reb. Ex. 017	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Mamou Playboy Records
SXM Reb. Ex. 018	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and [REDACTED]
SXM Reb. Ex. 019	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and No Big Deal Records
SXM Reb. Ex. 020	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and No Sleep Records
SXM Reb. Ex. 021	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and One Haven Music
SXM Reb. Ex. 022	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Opening Day Entertainment Group, Inc.
SXM Reb. Ex. 023	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and [REDACTED]
SXM Reb. Ex. 024	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Reach Records
SXM Reb. Ex. 025	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and [REDACTED]
SXM Reb. Ex. 026	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Sunnyside Records

Exhibit No.	Sponsoring Witness	Description
SXM Reb. Ex. 027	Ronald H. Gertz	Sound Recording Catalog License between Sirius XM Radio Inc. and Three Keys Music
SXM Reb. Ex. 028	Ronald H. Gertz	2/10/12 Email re eOne Entertainment – signed license
SXM Reb. Ex. 029	Ronald H. Gertz	11/17/11 Email from Fortress Marketing re Direct Licensing Opportunity
SXM Reb. Ex. 030	Ronald H. Gertz	11/15/11 Email from CA Management re Sirius XM Radio Direct Licensing Opportunity
SXM Reb. Ex. 031	Ronald H. Gertz	8/20/11 Email re Bar None Records – Direct Licensing Opportunity
SXM Reb. Ex. 032	Ronald H. Gertz	11/9/11 Email re Sirius XM Radio - Direct Licensing Opportunity
SXM Reb. Ex. 033	Ronald H. Gertz	12/14/11 Email re Bandit Records – Direct Licensing Opportunity
SXM Reb. Ex. 034	Ronald H. Gertz	8/30/11 Email from United Interests re Sirius XM Radio Direct Licensing Opportunity
SXM Reb. Ex. 035	Ronald H. Gertz	2/22/12 Email re Sirius XM Radio – license opt-out
SXM Reb. Ex. 036	Ronald H. Gertz	12/9/11 Email re SoundExchange Board Member Direct Licensing Interference
SXM Reb. Ex 037	Roger G. Noll	2/3/12 Email re Communications Q4 Board Report
SXM Reb. Ex 038	Roger G. Noll	11/8/11 Email re Draft Recording Academy Letter
SXM Reb. Ex 039	Roger G. Noll	10/27/11 Email re New SX Statement re Sirius XM
SXM Reb. Ex 040	Roger G. Noll	8/15/11 Email re SX Update on Sirius
SXM Reb. Ex 041	Roger G. Noll	11/17/11 Email re Sirius XM Radio – Direct Licensing Opportunity
SXM Reb. Ex 042	David P. Stowell	Sirius XM Radio Inc. Form 10-K for fiscal year ended 12/31/2011
SXM Reb. Ex 043	David P. Stowell	Pandora Media, Inc. Form 10-Q for the period 4/30/12
SXM Reb. Ex 044	David P. Stowell	Pandora Website Help website
SXM Reb. Ex 045	David P. Stowell	9/29/11 Pandora Press Release: “Hyundai Offers Pandora in Every New Veloster”
SXM Reb. Ex 046	David P. Stowell	11/16/11 Pandora Press Release: “Honda Joins Roster of Pandora Automotive Partners”
SXM Reb. Ex 047	David P. Stowell	10/12/11 Pandora Press Release: “Pandora Announces

Exhibit No.	Sponsoring Witness	Description
		Cadillac as Newest Automotive Partner"
SXM Reb. Ex 048	David P. Stowell	1/9/12 Pandora Press Release: "Acura Joins Line-up of Pandora Automotive Partners"
SXM Reb. Ex 049	David P. Stowell	6/6/12 Pandora Press Release: "Pandora Unveils Mazda as Latest Brand to Join Extensive Line-up of Automotive Partners"
SXM Reb. Ex 050	David P. Stowell	2/28/12 Pandora Press Release: "Pandora Celebrates Leap Day with Limited Interruptions"
SXM Reb. Ex 051	David P. Stowell	1/10/12 Press Release: "KIA Motors America Debuts Uvo E-Services at 2012 Consumer Electronics Show"

Declaration and Certification
Regarding Restricted Materials
and Redaction Log

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DECLARATION AND CERTIFICATION OF TODD D. LARSON

(On behalf of Sirius XM Radio Inc.)

1. I am counsel for Sirius XM Radio Inc. ("Sirius XM" or the "Company") in the above-captioned proceeding. I respectfully submit this declaration and certification pursuant to Rule 350.4(e)(1) per the terms of the Protective Order issued November 16, 2011 ("Protective Order"). I am authorized by Sirius XM to submit this Declaration on Sirius XM's behalf.

2. I have reviewed Sirius XM's Written Rebuttal Statement, witness statements, exhibits, and Redaction Log submitted in this proceeding. I have also reviewed the definitions and terms provided in the Protective Order. After consultation with my client, I have determined to the best of my knowledge, information and belief that portions of Sirius XM's Written Rebuttal Statement, witness statements, and accompanying exhibits contain information that is "Protected Material" as defined by the Order. The Protected Material is identified in the Redaction Log, shaded in the printed copies of Sirius XM's filing, and described in more detail below.

3. Such Protected Material includes, but is not limited to, testimony and exhibits involving (a) contracts, contractual terms, and contract strategy that are proprietary, not available

to the public, highly competitively sensitive and, at times, subject to express confidentiality provisions with third parties; (b) highly confidential internal business information, financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive; and (c) highly confidential and non-public information relating to the percentage of plays on Sirius XM's satellite radio service represented by specific record labels. Additionally, certain of the Protected Material that is to be filed along with Sirius XM's written rebuttal statement has been so designated by SoundExchange, and Sirius XM is therefore bound to treat it as such under the Protective Order.

4. If the designated contractual, strategic, and financial information of Sirius XM were to become public, it would place Sirius XM at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of Sirius XM, and jeopardize its business interests. Information related to confidential contracts or relationships with third-party content providers could be used by Sirius XM's terrestrial radio and Internet-based competitors, or by other content providers, to formulate rival bids, bid up Sirius XM payments, or otherwise unfairly jeopardize Sirius XM's commercial and competitive interests.

5. With respect to the financial information in the Restricted materials, I understand that Sirius XM has not disclosed to the public or the investment community the financial information that it seeks to restrict here (including, but not limited to, sub-categories of revenue attributable to specific sources). As a result, neither the Company's competitors nor the investing public has been privy to that information, which the Company has viewed as highly confidential and sensitive, and has guarded closely. In addition, when Sirius XM does disclose information about the Company's finances to the market as required by law, the Company provides accompanying analysis and commentary that contextualizes disclosures by its officers.

The information that Sirius XM seeks to restrict under the Protective Order, while truthful and accurate to the best of each witness's knowledge, was not intended for public release or prepared with that audience in mind, and therefore was not accompanied the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the statements containing the information have not been approved by Sirius XM's Board of Directors, as such sensitive disclosures usually are, or accompanied by the typical disclaimers that usually accompany such disclosures. Sirius XM could experience negative market repercussions, competitive disadvantage, and even possible legal exposure were this confidential financial information released publicly without proper context or explanation.

6. The written rebuttal statement of David J. Frear, Executive Vice President and Chief Financial Officer, Sirius XM contains material non-public information concerning Sirius XM's direct license initiative, as well as the terms of agreements with third-party content providers (some of which is subject to specific confidentiality provisions prohibiting the disclosure of the identity of the third-party). Mr. Frear's testimony also includes the terms of a confidential agreement between Sirius XM and its agent Music Reports, Inc. ("MRI") for anticipated costs relating to the ongoing direct-licensing effort. Additionally, Mr. Frear testifies regarding specific categories of Sirius XM's actual and budgeted revenue that are more detailed than the top-level revenues reported by the Company to the public, as well as details of Sirius XM's reports of use to SoundExchange that are not available to the public. Finally, Mr. Frear's testimony contains material non-public data concerning Sirius XM's actual and projected costs related to its music and non-music content. Disclosure of these details would, for reasons described in paragraphs 4-5 above, competitively disadvantage Sirius XM.

7. The written rebuttal statement of Ronald H. Gertz contains material non-public information concerning Sirius XM's direct licenses with certain independent labels, the terms of which are competitively sensitive and not made available to the public. True and correct copies of such direct licenses are attached to Mr. Gertz's testimony as SXM Rebuttal Exhibits 5 - 27. Additionally, certain of Sirius XM's direct licensors negotiated enhanced confidentiality provision in their license agreements pursuant to which Sirius XM may not disclose the identity of the licensor on the public record. Mr. Gertz's testimony also contains material non-public data regarding percentage of plays on Sirius XM's satellite radio service that are represented by specific record labels, as well as the terms of agreements with third-party content providers (some of which is subject to specific confidentiality provisions prohibiting the disclosure of the identity of the third-party). For reasons discussed in paragraph 4 above, disclosure of these contractual arrangements could competitively disadvantage Sirius XM. Finally, Mr. Gertz's testimony also contains material non-public information concerning MRI's negotiation of potential direct licenses on Sirius XM's behalf. True and correct copies of such communications are attached to Mr. Gertz's testimony as SXM Rebuttal Exhibits 28-36. Disclosure of the identities of these individual artists or the terms discussed and negotiated between them and Sirius XM could jeopardize the Company's relationships with these individuals and their labels, who communicated with MRI with the understanding the communications were private and confidential, and thus disclosure would cause Sirius XM competitive harm.

8. The written rebuttal statement of Roger G. Noll and certain tables and appendices attached thereto contain material concerning non-public license agreement terms between certain major record companies and digital music services produced by SoundExchange. Dr. Noll's testimony also contains material concerning non-public communications between and among

SoundExchange and other record industry organizations and record labels, as well as non-public data concerning revenues and costs of Universal Music Group as stated in the Written Direct Testimony of Charles Ciongoli. This material was designated as Restricted under the Protective Order by SoundExchange and Sirius XM has honored those designations herein. Dr. Noll's testimony and tables also contains material non-public data regarding percentage of plays on Sirius XM's satellite radio service that are represented by specific record labels, as well as the terms of agreements with third-party content providers (some of which is subject to specific confidentiality provisions prohibiting the disclosure of the identity of the third-party). Disclosure of this information would, for reasons discussed in paragraphs 4 above among others, competitively disadvantage Sirius XM.

9. The written rebuttal statement of Michael A. Salinger contains material concerning non-public license agreement terms between certain major record companies and digital music services. This material was designated as Restricted under the Protective Order by SoundExchange and Sirius XM has honored those designations herein.

10. The contractual, commercial and financial information described in the paragraphs above and detailed on the accompanying Redaction Log must be treated as restricted "Protected Material" in order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling Sirius XM to provide the Copyright Royalty Judges with the most complete record possible on which to base their determination in this proceeding.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

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Counsel for Sirius XM Radio Inc.

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of

DETERMINATION OF RATES AND TERMS
FOR PREEXISTING SUBSCRIPTION AND
SATELLITE DIGITAL AUDIO RADIO
SERVICES

)
)
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) Docket No. 2011-1
) CRB PSS/Satellite II
)
)
)

**REDACTION LOG FOR THE WRITTEN REBUTTAL STATEMENT OF
SIRIUS XM RADIO INC.**

Pursuant to the requirements of the Protective Order entered by Judges on November 16, 2011, Sirius XM Radio Inc. ("Sirius XM" or the "Company") hereby submits the following list of redactions from its Written Rebuttal Statement filed July 2, 2012, and the undersigned certify, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration and Certification of Todd D. Larson submitted herewith, that the listed redacted materials meet the definition of "Restricted" contained in the Protective Order.

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
Written Rebuttal Testimony of David J. Frear	Page 3, Paragraph 6	Contains material non-public data regarding specific direct licensors whose license agreements with Sirius XM prohibit disclosure of their identities or the contents of the direct license agreements
	Page 4, Footnote 2	Contains material non-public information concerning terms of proprietary agreements with third-party content providers
	Page 5, Paragraph 13	Contains material non-public information concerning terms of confidential services agreement between Sirius XM and MRI and

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
		budgeted future expenses related to the same
	Page 9, Paragraph 21	Contains material non-public data concerning Sirius XM's budgeted revenue in specific category not disclosed in public filings and royalty payments that would derive therefrom
	Page 10, Paragraphs 23-24	Contains material non-public data concerning percentage of total plays on Sirius XM's satellite radio that were directly licensed in April 2012, Sirius XM's budgeted revenue in specific category not disclosed in public filings and royalty payments that would derive therefrom
	Page 11, Paragraph 26 & Foonote 13	Contains material non-public data concerning Sirius XM's budgeted revenue in specific category not disclosed in public filings and royalty payments that would derive therefrom
	Page 12, Paragraph 27	Contains material non-public data concerning Sirius XM's budgeted revenue in specific category not disclosed in public filings and royalty payments that would derive therefrom
	Page 13, Paragraph 29	Contains material non-public data concerning Sirius XM's budgeted revenue in specific category not disclosed in public filings and royalty payments that would derive therefrom
	Page 14, Paragraph 31	Contains material non-public data concerning Sirius XM's budgeted revenue in specific category not

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
	<p>Page 22, Paragraph 48</p> <p>Page 23, Table 1</p> <p>Page 23, Paragraph 50</p>	<p>disclosed in public filings and royalty payments that would derive therefrom</p> <p>Contains material non-public data concerning Sirius XM's reduction of non-music costs and increases in music programming costs since <i>Satellite I</i> proceeding</p> <p>Contains material non-public data concerning Sirius XM's projected music costs under different royalty rate scenarios</p> <p>Contains material non-public data concerning differences between Sirius XM's costs for music versus non-music content</p>
Written Rebuttal Testimony of Ronald H. Gertz	<p>Page 2, Paragraph 3 and Footnotes 2-3</p> <p>Page 3-4, Paragraph 5</p> <p>Pages 5-6, Table 1</p> <p>Page 8, Paragraph 10</p>	<p>Contain material non-public data regarding terms agreed to by direct licensors</p> <p>Contains material non-public data regarding specific direct licensors whose license agreements with Sirius XM prohibit disclosure of their identities or the contents of the direct license agreements</p> <p>Contains material non-public information concerning the percentage of total plays on Sirius XM's satellite radio represented by major labels, independent labels and directly licensed catalogs</p> <p>Contain non-public confidential communications between MRI (on Sirius XM's behalf) and potential direct licensors regarding negotiation of direct licenses</p>

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
	Page 10, Paragraph 14	Contain non-public confidential communications between MRI (on Sirius XM's behalf) and potential direct licensor regarding negotiation of direct licenses
	Page 10, Footnote 11	Contains material non-public data regarding specific direct licensors whose license agreements with Sirius XM prohibit disclosure of their identities or the contents of the direct license agreements.
	SXM Reb. Exs. 5-27	Contain material non-public data regarding terms agreed to by direct licensors
	SXM Reb. Exs. 28-36	Contain non-public confidential communications between MRI (on Sirius XM's behalf) and potential direct licensors regarding negotiation of direct licenses
Written Rebuttal Testimony of Roger G. Noll	Page 8	Contains non-public information regarding terms of non-public agreement between Warner Music Group and Slacker. This information has been designated as Restricted by SoundExchange.
	Page 11	Contains non-public information regarding communications between Warner Music Group and Slacker concerning licensing for specific functionality. This information has been designated as Restricted by SoundExchange.

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
	Page 16	Contains non-public information regarding rates for interactive services and ringtones/ringbacks in agreements with major record companies. This information has been designated as Restricted by SoundExchange.
	Page 30-32	Contains non-public information regarding communications between and among SoundExchange and other record industry organizations and record labels concerning Sirius XM's direct license initiative. This information has been designated as Restricted by SoundExchange.
	Page 33	Contains material non-public information concerning the percentage of total plays on Sirius XM's satellite radio represented by major labels, independent labels and directly licensed catalogs
	Page 34	Contains material non-public data regarding specific direct licensors whose license agreements with Sirius XM prohibit disclosure of their identities or the contents of the direct license agreements.
	Pages 35-37	Contains terms and negotiations of material non-public license agreements between certain major record companies and interactive music services. This information has been designated as Restricted by SoundExchange.
	Page 56	Contains non-public data regarding Universal Music Group revenues and costs. This

<u>Document</u>	<u>Page/Paragraph/ Exhibit No.</u>	<u>Description</u>
	Table 1	information has been designated as Restricted by SoundExchange. Contains non-public information regarding number of plays for non-interactive subscription services. This information has been designated as Restricted by SoundExchange.
	Table 2	Contains material non-public information regarding terms negotiated by record labels for direct licenses with Sirius XM.
	Table 3	Contains material non-public information regarding specific labels' share of airplay on Sirius XM's satellite radio service. Also contains material non-public data regarding specific direct licensors whose license agreements with Sirius XM prohibit disclosure of their identities or the contents of the direct license agreements
Written Rebuttal Testimony of Michael A. Salinger	Page 9, Footnote 6	Contains non-public information from proprietary data produced by Warner Music Group. This information has been designated as Restricted by SoundExchange.
	Page 9, Paragraph 19	Contains terms of non-public license agreements between record labels and Cricket. This information has been designated as Restricted by SoundExchange.
	Page 10, Paragraph 21 & Footnote 9	Contains terms of non-public license agreements between major record company EMI and digital music service Slacker. This information has been designated as Restricted by SoundExchange.

Dated: July 2, 2012

Respectfully submitted,

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:

Determination of Rates and Terms for
Preexisting Subscription Services and
Satellite Digital Audio Radio Services

Docket No. 2011-1
CRB PSS/Satellite II

CERTIFICATE OF SERVICE

I, Christine Doktor, hereby certify that a copy of the foregoing public version of the
Written Rebuttal Statement of Sirius XM Radio Inc. has been served on this 6th day of
July, 2012 by electronic mail and overnight mail on the following parties:

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